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west virginia department of environmental protection

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Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
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Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
[www.dep.wv.gov](http://www.dep.wv.gov)

**CONSENT ORDER  
ISSUED UNDER THE  
WATER POLLUTION CONTROL ACT  
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Robert Adkins, Treasurer  
Ohio River Sewer Project  
5824 Ohio River Rd.  
Huntington, WV 25702

DATE: March 20, 2012

ORDER NO.: 7486

**INTRODUCTION**

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq. to Ohio River Sewer Project Homeowner's Association (hereinafter "Ohio River Sewer Project").

**FINDINGS OF FACT**

In support of this Order, the Director hereby finds the following:

1. Ohio River Sewer Project operates a sewage treatment lagoon located near Huntington, Cabell County, West Virginia. Ohio River Sewer Project was issued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG550447. The permit was administratively extended until July 13, 2011.
2. On October 25, 2010, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the sewage lagoon and found the Ohio River Sewer Project to be in violation of Section F, Operation and Maintenance, of its WV/NPDES Permit. The chlorine and dechlor feeder tubes were empty at the time of inspection. Notice of Violation (NOV) W10-06-61-MCD was issued for this deficiency.
3. Following the aforementioned inspection, WVDEP personnel determined that the Ohio River Sewer Project had not submitted Discharge Monitoring Reports (DMRs) since the 3<sup>rd</sup> quarter of 2008. NOV W10-06-60-MCD was issued for this deficiency.

**Promoting a healthy environment.**

4. On June 16, 2011, WVDEP personnel responded to a complaint regarding an odor from the Ohio River Sewer Project's sewer lagoon. An inspection revealed general deficiencies in the Operation and Maintenance of the lagoon. An accumulation of duckweed on the surface of the lagoon and numerous muskrat holes were also observed.
  5. On August 11, 2011, WVDEP personnel conducted an inspection of the Ohio River Sewer Project's sewer lagoon, and the following violations were observed and documented:
    - a. The Ohio River Sewer Project failed to renew its WV/NPDES permit and was operating without valid permit coverage. NOV W11-06-035-TB was issued for this deficiency.
    - b. The Ohio River Sewer Project only submitted one (1) DMR since the 3<sup>rd</sup> quarter of 2008. NOV W11-06-034-TB was issued for this deficiency.
    - c. The 4<sup>th</sup> quarter 2010 DMR was reviewed by WVDEP personnel, and the following deficiencies were noted:
      - i. All required fields were not completed.
      - ii. Permit exceedances of Total Suspended Solids and Fecal Coliform are further described and detailed in Attachment A and are summarized as follows:
        1. Two (2) minor exceedances
        2. Two (2) moderate exceedances
- NOV No. W11-06-028-MBC was issued for these deficiencies.
6. On October 26, 2011, Ohio River Sewer Project's WV/NPDES Permit was reissued.
7. On January 13, 2012, WVDEP personnel and representatives of Ohio River Sewer Project met to discuss the terms and conditions of this Order.
8. On February 21 and 28, 2012, WVDEP personnel received financial documents from Ohio River Sewer Project. The provided information was used to perform an economic analysis which evaluated Ohio River Sewer Project's ability to pay a civil administrative penalty.

### **ORDER FOR COMPLIANCE**

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Ohio River Sewer Project shall immediately take all measures to initiate compliance with all terms and conditions of its permit and pertinent laws and rules.
2. Ohio River Sewer Project's operator shall register for and attend the next available 1-S certification course sponsored by the Environmental Training Center (ETC) as per Section G "Other Requirements" of the facility's WV/NPDES permit. Attachment B contains the 2012 ETC training Schedule.

3. Within thirty (30) days of entry of this Order, Ohio River Sewer Project shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Ohio River Sewer Project will achieve compliance with all terms and conditions of its WV/NPDES permit and/or pertinent laws and rules. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor  
SW Satellite Environmental Enforcement Office  
PO Box 662  
Teays, WV 25569**

A copy of this plan shall be submitted to:

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WVDEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

4. Because of Ohio River Sewer Project's Legislative Rule and permit violations, Ohio River Sewer Project shall be assessed a civil administrative penalty of five hundred thirty dollars (\$530) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following schedule:

Payment 1 in the amount of \$24.09 due on or before May 1, 2012.  
Payment 2 in the amount of \$24.09 due on or before June 1, 2012.  
Payment 3 in the amount of \$24.09 due on or before July 1, 2012.  
Payment 4 in the amount of \$24.09 due on or before August 1, 2012.  
Payment 5 in the amount of \$24.09 due on or before September 1, 2012.  
Payment 6 in the amount of \$24.09 due on or before October 1, 2012.  
Payment 7 in the amount of \$24.09 due on or before November 1, 2012.  
Payment 8 in the amount of \$24.09 due on or before December 1, 2012.  
Payment 9 in the amount of \$24.09 due on or before January 1, 2013.  
Payment 10 in the amount of \$24.09 due on or before February 1, 2013.  
Payment 11 in the amount of \$24.09 due on or before March 1, 2013.  
Payment 12 in the amount of \$24.09 due on or before April 1, 2013.  
Payment 13 in the amount of \$24.09 due on or before May 1, 2013.  
Payment 14 in the amount of \$24.09 due on or before June 1, 2013.  
Payment 15 in the amount of \$24.09 due on or before July 1, 2013.  
Payment 16 in the amount of \$24.09 due on or before August 1, 2013.

Payment 17 in the amount of \$24.09 due on or before September 1, 2013.  
Payment 18 in the amount of \$24.09 due on or before October 1, 2013.  
Payment 19 in the amount of \$24.09 due on or before November 1, 2013.  
Payment 20 in the amount of \$24.09 due on or before December 1, 2013.  
Payment 21 in the amount of \$24.09 due on or before January 1, 2014.  
Payment 22 in the amount of \$24.11 due on or before February 1, 2014.

Payment shall be mailed to:

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WV-DEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

### **OTHER PROVISIONS**

1. Ohio River Sewer Project hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, Ohio River Sewer Project agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Ohio River Sewer Project does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding Ohio River Sewer Project other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, Ohio River Sewer Project shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Ohio River Sewer Project becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Ohio River Sewer Project intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Ohio River Sewer Project (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be

considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.

4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Ohio River Sewer Project of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Ohio River Sewer Project to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on Ohio River Sewer Project, its successors and assigns.
7. This Order shall terminate upon Ohio River Sewer Project's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Robert Adkins  
Ohio River Sewer Project

3-27-12

Date

Public Notice begin: \_\_\_\_\_  
Date

Public Notice end: \_\_\_\_\_  
Date

**RECEIVED**

MAR 28 2012

ENVIRONMENTAL  
ENFORCEMENT

\_\_\_\_\_  
Scott G. Mandirola, Director  
Division of Water and Waste Management

\_\_\_\_\_  
Date

**Attachment A:**  
Ohio River Sewer Project Exceedances

Outlet 001 DMR Exceedances - AVG. MONTHLY - 4th Quarter 2010						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
11/18/2010	Total Suspended Solids	mg/L	30	84	180%	-	X	-
11/18/2010	Fecal Coliforms	Cnts/100M	200	540	170%	-	X	-

Outlet 001 DMR Exceedances - MAX. DAILY - 4th Quarter 2010						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
11/18/2010	Total Suspended Solids	mg/L	60	84	40%	X	-	-
11/18/2010	Fecal Coliforms	Cnts/100M	400	540	35%	X	-	-

Outlet 001 Totals		Degree of non-compliance		
		Min	Mod	Maj
		2	2	0



## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Ohio River Sewer Project

Receiving Stream:

 Unnamed Tributary to the Ohio  
River

Treatment System Design Maximum Flow: 0.02 MGD

Treatment System Actual Average Flow: MGD (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#											
			2	5a	5b	5ci	5cii.1	5cii.2						
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1						
b)	Toxicity of Pollutant	0 to 3	1	0	0	0	1	1						
c)	Sensitivity of the Environment	0 to 3	1	0	0	0	1	1						
d)	Length of Time	1 to 3	1	1	3	1	1	1						
e)	Actual Exposure and Effects thereon	0 to 3	1	0	0	0	1	1						
	Average Potential for Harm Factor		1	0.4	0.8	0.4	1	1	No	No	No	No	No	No
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	1	3	3	1	1	2						

### Potential for Harm Factors:

1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)

1)d - Length of Time of Violation

1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

### Examples/Guidance:

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Minor = exceedance of permit limit by  $\leq 40\%$  for Avg. Monthly or  $\leq 100\%$  for Daily Max., exceed numeric WQ standard by  $\leq 100\%$ , or report doesn't contain some minor information.

Moderate = exceedance of permit limit by  $\geq 41\%$  and  $\leq 300\%$  for Avg. Monthly,  $\geq 101\%$  and  $\leq 600\%$  for Daily Max., exceed numeric WQ standard by  $\geq 101\%$  and  $\leq 600\%$  or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by  $\geq 301\%$  for Avg. Monthly,  $\geq 601\%$  for Daily Max., exceed numeric WQ standard by  $\geq 601\%$ , failure to submit a report, failure to obtain a permit, failure to report a spill, etc. Note that a facility in SNC should be rated as major for length of time and degree of non-compliance.

Narrative WQ standard violations - case-by-case.

Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.

[illegible]



		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm to Human Health or the Environment	Major	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	Moderate	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	Minor	\$1,500 to \$2,000	\$1,000 to \$1,500	Up to \$1,000

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
2	Minor	Minor	\$1,000	1	\$1,000
5a	Minor	Major	\$1,700	1	\$1,700
5b	Minor	Major	\$1,900	6	\$11,400
5ci	Minor	Minor	\$400	1	\$400
5cii.1	Minor	Minor	\$1,000	2	\$2,000
5cii.2	Minor	Moderate	\$1,500	2	\$3,000
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
<b>Total Base Penalty</b>					<b>\$19,500</b>

## **Penalty Adjustment Factors**

(pursuant to 47CSR1-6.2)

### **Penalty Adjustment Factor**

6.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase

6.2.b.4 - Previous compliance/noncompliance history - 0% to 100% increase - based upon review of last three (3) years - Warning = maximum of 5% each, N.O.V. = maximum of 10% each, previous Order = maximum of 25% each - Consistent DMR violations for <1 year = 10% maximum, for >1 year but <2 years = 20% maximum, for >2 years but <3 years = 30% maximum, for >3 years = 40 % maximum

6.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)

6.2.b.7 - Public Interest (increase to be determined)

6.2.b.8 - Loss of enjoyment of the environment (increase to be determined)

6.2.b.9 - Staff investigative costs (increase to be determined)

6.2.b.10 - Other factors

**Size of Violator: 0 - 50% decrease**

**NOTE:** This factor is not available to discharges that are causing a water quality violation. This factor does not apply to a commercial or industrial facility that employees or is part of a corporation that employees more than 100 individuals.

Avg. Daily WW Discharge Flow (gpd)	% Reduction Factor
< 5,000	50
5,000 to 9,999	40
10,000 to 19,999	30
20,000 to 29,999	20
30,000 to 39,999	10
40,000 to 99,999	5
> 100,000	0

**Additional Other factors to be determined for increases or decreases on a case-by-case basis.**

Public Notice Costs (cost for newspaper advertisement)

6.2.b.2 - Good Faith - 10% decrease to 10% increase

6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

6.2.b.5 - Ability to pay a civil penalty - 0% to 100% decrease

## Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -			\$0
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$600		\$600
6.2.b.7 - Public Interest - (flat monetary increase)			\$0
6.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
6.2.b.9 - Investigative costs - (flat monetary increase)			\$0
6.2.b.10 - Other factors (size of violator)			\$0
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)			\$0
Public Notice Costs (flat monetary increase)	\$30		\$30
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease		10	(\$1,950)
6.2.b.3 - Cooperation with the Secretary		10	(\$1,950)
6.2.b.5 - Ability to Pay		80.511	(\$15,700)
<b>Penalty Adjustments</b>			<b>(\$18,970)</b>
<b>Penalty =</b>			<b>\$530</b>

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$600
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
<b>Estimated Economic Benefit</b>	<b>\$600</b>
<b>Comments:</b> DMR analysis and submittal for six (6) quarters	